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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/538,448

06/10/2005

Thomas Netsch

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10/12/2010

PHILIPS INTELLECTUAL PROPERTY & STANDARDS

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EXAMINER

MEHTA, PARIKHA SOLANKI

ART UNIT

PAPER NUMBER

3737

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/538,448</p>	<p>Applicant(s) NETSCH ET AL.</p>	
	<p>Examiner PARIKHA S. MEHTA</p>	<p>Art Unit 3737</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 September 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): The previous rejections under 35 u.S.C. 112, and 35 U.S.C. 101.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-13 and 15-19.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Tse Chen/
Supervisory Patent Examiner, Art Unit 3777

Applicant's amendments are sufficient to overcome the previous rejections of claims 5 and 7 under 35 U.S.C. 101, and the rejection of claims 1-4 and 15-19 under 35 U.S.C. 112, which are hereby vacated accordingly. Applicant's arguments and amendments are not sufficient to overcome the prior art rejection, which is maintained.

Applicant argues that the Examiner failed to make a prima facie showing of obviousness for the position that a skilled artisan would find it obvious to modify the prior art of record to use first and second images having an angular offset. Applicant clearly describes the prior art as bringing to images into congruence via a geometrical transformation (Spec p. 1-2). Angular rotation is very well known in the art of medical image processing to be a common geometrical transformation--for instance, when two images are taken during different imaging sessions or by different imaging devices, the original coordinate systems almost never align perfectly, thus it is common to perform a coordinate transformation, i.e., eliminate angular offset between the images, to bring them into alignment. Accordingly, it would have been an obvious matter of design choice for a skilled artisan to have performed the prior art method by using two images having an angular offset as claimed.

Regarding Applicant's arguments that the specification sets forth clear advantages of the claimed angular offset at line 12 of p. 2 of the specification, Examiner finds no explicit discussion of the novelty or advantages of such offset in that passage. The specification at the passages indicated by Applicant does nothing more than broadly discuss the purported advantages of the invention as a whole. Thus, the passages are not sufficient to overcome the obviousness argument set forth by the Examiner. Examiner notes that this deficiency was explicitly addressed in the response to arguments in the Final Rejection of 18 June 2010.

Regarding claims 5 and 6, an angular offset of 90 degrees is considered obvious for the same reasons set forth above for the general feature of the angular offset as discussed for claim 1. As for using more than one reference and current image, Applicant has not shown the second image to present a patentable advantage, therefore such duplication of the current and reference image alignment step would be obvious. Examiner notes that all of these features were previously and explicitly addressed in both the rejection and response to arguments in the Final Rejection of 18 June 2010.

Regarding claim 10, the rejection is predatory upon the breadth of the terms "oriented", "head-foot", "anterior-posterior" and "left-right". The latter three terms are relative and subject to extremely broad interpretation--so long as a prior art image contains information that can be arbitrarily displayed so as to have a left side and right side, it is "oriented" in a "left-right" direction, for example. Similar arguments apply to the other claimed directions. Again, Examiner notes that all of these features were previously and explicitly addressed in both the rejection and response to arguments in the Final Rejection of 18 June 2010.

As it appears that Applicant present no new and persuasive arguments to overcome the prior art of record, all claims remain rejected as unpatentable for at least the reasons discussed above, and those set forth in the Final Rejection of 18 June 2010.

As a general note, Examiner points out that "current" as it is set forth in the claims is not given significant patentable weight. Within its broadest reasonable interpretation as commonly used in the art, "current" only defines the image as "existing in the present time" (Merriam Webster). As Applicant has not redefined the word in any explicit terms to show that, as it is used in the claims and description, it is meant to convey anything other than its ordinary meaning in the art, the Examiner's broad interpretation of the term is proper. Accordingly, any image existing at the time of image processing meets the limitation of being "current".